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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,798	09/19/2001	Daniel Albertus Jozef Dijs	2120/77997	1409

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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/23/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/955798	Applicant(s) DIIS
Examiner S. WEINSTEIN	Group Art Unit 1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 9/26/02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 25-37 is/are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 25-37 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 6+9
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 25-37 are rejected under 35USC112, second paragraph as being indefinite. In regard to claim 25, even though the coffee machine is not positively recited, it is not clear what the relationship is between the bottom of the well section and the grooves and how the pouch can rest on the bottom and have the pouch not contact the bottom. That is, the elements of the claim are not clearly defined or structurally related. Similarly, for claim 33. In claim 37, line 2, "whereby" should read wherein. In claim 30, "the container" lacks antecedent basis.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siccaldi (EP 555775) in view of Bosch-Siemens (Germ, Utility Model No. 7430109), Illy et al (EP 710462), Bloemen (Belg. 620881), Cisaria (5,638,741), MacCorkell ('474), Blanc ('149), Illy ('694) and Grykiewicz et al ('787).

In regard to claim 25, Siccaldi discloses a pouch capable of being used in preparing coffee in a coffee machine, said pouch being formed from filter paper and said pouch having a pill shaped central portion (B) surrounded by a flat annular sealing portion (P). This is all the structure that claim 25 recites. Claim 25 also recites a functionally recited "configurational" relationship between the pouch and the non-positively recited coffee machine. That is, claim 25

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recites that the central portion of the pouch is "configured" to rest on the bottom of a well section of the coffee machine "whereby" "during use", water fed to the top of the pouch can only flow out of the pouch where the pouch does not contact the bottom (of the well section). Siccardi discloses a well section shown in Figures 3 and 6 as part of his coffee machine and clearly shows that the central portion of the pouch is configured to be capable of resting on the bottom of the well section and would be capable of only allowing water to flow out of the pouch where the pouch does not "contact" the bottom. Note that in Siccardi, as in applicants' invention, only the bottom of the well has any means to allow water to flow through the bag without contacting a solid surface. In the case of applicants claim, although it is not clearly recited, it is the grooves. In the case of Siccardi, it is the holes. Siccardi unequivocally teaches that the pouch is configured to the shape and size of the well. Siccardi need not show grooves in the well since the coffee machine is not positively recited. However, whether Siccardi employed holes or grooves (the latter applicant admits is old) the structure of Siccardi would be capable of resting on the bottom. Bosch-Siemens, Illy et al ('462), Blomen, Cisaria and MacCorkell, Blanc, Illy ('694), and Grykiewicz et al are all relied on as further evidence of coffee pouches which are configured to be associated with coffee machines, employ the "pill" shape with flat sealing flanges, and wherein the water can only get through the coffee pouch in bottom areas of the pouch not in contact with the bottom of the apparatus (e.g. Bosch Siemens-Figure 3). In regard to claims, 31, 32, 35, 36 and 37, which recite the diameter of the central portion of the pouch and the diameter of the pouch, the specific dimensions of the pouch and the central portion of the pouch is an obvious function of the specific dimensions of the inner well portion and the outer well portion. That is, the art clearly teaches dimensioning the pouch so that the sealing rim of

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the pouch extends to the outer sealing rim of the pouch receptacle and the inner central portion of the pouch is configured to be retained in the central portion of the receptacle. As for the specific numbers, these would be an obvious determination based on the amount of cups of coffee the pouch is to produce. The larger the pouch, the more coffee one can put in and the more cups one can make. Applicant notes that the sizes recited are geared for an assembly that produces one to two cups per pouch.

All of applicant's remarks filed 9/27/02, paper no. 8 have been fully and carefully considered but are not found to be convincing. In fact, the urgings are for the most part, moot in view of the new ground of rejection. They are also, for the most part, directed to limitations not found in most of the claims. Many of the claims do not recite the outer diameter of the pouch and the inner diameter so that the urgings are directed to limitations not found in those claims. In any case, it is urged on page 4 that the dimensions of the pouch are chosen so that an optimum extraction efficiency of ground coffee may be achieved in a relatively short time using a relatively small water pressure and that if the diameter was smaller, then ^{the} height of the bed would be larger, and the flow rate would be lower. There appears to be nothing in the specification about this alleged result. In fact, the specification only appears to use the two dimensions of the pouch because the serving size is for 1 to 2 cups and the outer and inner dimensions of the pouch must match the outer and inner dimensions of the pouch receiver. The specification further states that if the dimensions of the pouch are greater or smaller, then there is a risk of by pass. See page 3, para. 4 in this regard. There is nothing in the specification about maximizing extractive efficiency.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is 703 308-0650. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703 308-3959. The fax phone numbers for the organization where this application is assigned are 703 872-9310 for regular communications and 703 872-9311 for After Final communications.


Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703 308-0661.

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Examiner Weinstein/ng
January 10, 2003


STEVE WEINSTEIN
PRIMARY EXAMINER 1761
1/20/03